

PRELIMINARY AMENDMENT
Division of Serial No. 08/464,554
Attorney Docket No. 0590112

As a result of this amendment, the property limitations of the gasolines required in the independent composition claims are tabulated as follows:

Ind. Composition Claim	RVP psi	T10 °F	T50 °F	T90 °F	Par. Vol%	Olefin Vol%	Arom Vol%	Octane
Cl 83	<7.5	≤158	<203	<300	>65	<8	≥4.5	≥87
Cl 84	<7.5	≤158	≤215	≤315	>75	<8	≥4.5	≥87
Cl 85	<7.5	≤149	≤215	<300	>65	<8	≥4.5	≥87
Cl 86	<7.5	<140	≤215	≤315	>65	<8	≥4.5	≥87
Cl 87	<7.5	≤158	≤215		>65	<8	≥4.5	≥92
Cl 88	<7.5	≤158	≤215	<300	>50	<6	≥4.5	≥92
Cl 89	<7.0	≤158	≤215		>50	<6	≥4.5	≥92

The property limitations of the gasolines required in the independent method claims are as follows:

Ind. Method Claim	RVP psi	T10 °F	T50 °F	T90 °F	Par. Vol%	Olefin Vol%	Arom Vol%	Octane
Cl 130	<7.5	≤158	≤212	≤315	>50	<8	≥4.5	≥87
Cl 131	<7.0	≤158	≤215		>50	<8	≥4.5	≥87
Cl 132	<7.5	≤158	≤215	≤315	>65	<8	≥4.5	≥87

It is noted that the seven successive dependent claims 123 to 129 are directed to methods requiring the compositions of the seven successive independent composition claims 83 to 89, respectively.

Support for Claim Language

Support for the new independent method claims (aside from the gasoline compositions required therein) can be found, inter alia, from specification page 31, line 23 to page 36, line 10 (esp. page 33, line 31, to page 35, line 11) and in original claims 59 to 62 and 76 to 80. The specific requirement for "at least 50,000 gallons" of gasoline production in step (1) of the method claims is supported at page 34, line 4. Step (2) of the method claims, directed to commencing delivery of the unleaded gasoline to service stations, is supported in a number of locations, for example, original claim 76, steps (a) and (b); original claim 78, steps (a) and (b); and specification page 34, lines 15-16. (Step (2) encompasses the introduction of gasoline produced in step (1) into either a delivery vehicle--such as a tank truck--which could deliver the gasoline per se to the service stations or into a delivery system--such as a pipeline distribution system--which could deliver the unleaded gasolines admixed with other unleaded gasolines to the service stations.)

Support for dependent claims 141 to 146 can be found generally at specification pages 31 to 35, with literal support for "Los Angeles county" in claims 145 and 146 being found at page 35, lines 1-2.

With respect to the requirement in claim 85 for a T10 no greater than 149° F., this limitation is literally supported by the teaching in Table 1 (specification page 9) showing that the maximum T10 for a Class B gasoline is 149° F. However,

applicants specifically note that this language does not limit the claim to a Class B gasoline. Indeed, the specification teaches a clear advantage for a Class A gasoline having a maximum T10 of 149° F. as compared to a Class A gasoline having a higher T10 (up to 158 °F as taught in Table 1, specification page 9). The specification repeatedly teaches the advantage of lowering T10 to yield emissions reductions, and further teaches progressively better results as one continues to lower the T10, even to values of no more than 122° F. See, for example, the disclosure at page 13, lines 34-36; page 29, lines 14 to 19; page 27, lines 11-14 & 23-24 & 29-33; and page 30, lines 12-13 & 19. Hence, the specification alerts one of ordinary skill in the art to the advantages associated with a Class A gasoline having a T10 no greater than 149° F.

All other limitations as to gasoline properties, either those added to claims 83 or 84 by amendment or those introduced into new claims 85 to 148, are believed to be the same or so similar to limitations previously presented in this application, or in one or more of the parent applications, that no new issue of support is created by their presentation herein. For example, the language added to claim 83 and introduced into new claims 85 to 148 of "at least 4.5 volume percent" aromatics," which serves merely to emphasize the nature of the claimed gasolines as automotive gasoline (or motor gasoline) containing aromatics in

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at least a minimal amount,¹ creates no new issue since the same recitation was in presently pending claim 84, subparagraph (g). (This language in any event is fully supported by the disclosure at specification page 8, line 30 and Tables 2 and 5 (specification pages 15 and 23, respectively) showing that the minimum aromatics content in any of the fuels applicants used in their experiments of Examples 1 to 3 was 4.5 vol.%.)

Similarly, and again by way of example, new claim 130 specifies a maximum T50 of 212° F.--a limitation creating no new issue of support since it was introduced into claim 124 in applicants' first patent application, Serial No. 07/628,488 filed Dec. 13, 1990, now U.S. Patent 5,288,393 in the PRELIMINARY AMENDMENT mailed May 22, 1991.

In light of the foregoing, applicants see no need to specifically point to support for any other limitation pertaining to gasoline properties in the claims, but should the Examiner have any concerns as to support for one or more of the claim limitations, applicants' attorney could, upon telephone request, point to locations in the specification where the Examiner can find support.

Finally with respect to this discussion regarding "support," applicants above have made reference to various

¹ Automotive gasolines almost always contain aromatics in concentrations exceeding 10 volume percent, usually above 20 volume percent. See, for example, the graphical print out on the last page (Exhibit G16) of Dr. Jessup's affidavit dated Nov. 2, 1995 in applicants grandparent application, Serial No. 08/409,074 filed March 22, 1995, now U.S. Patent 5,593,567 showing that the overwhelmingly vast majority of some 16,550 sampled service station gasolines have aromatics contents above 10 vol%.

locations where literal support can be found in the specification for a particular limitation or particular language in a claim. However, for the record, it is emphasized that literal support is not needed, nor is literal support the "test" for whether or not sufficient support is present for a given limitation or term in a claim. As stated in *In re Kaslow*, 707 F.2d 1366, 1375, 217 USPQ 1089, 1096 (Fed. Cir. 1983) (while quoting the Board below with approval):

The test for determining compliance with the written description requirement is whether the disclosure of the application as originally filed reasonably conveys to the artisan that the inventor had possession at that time of the later claimed subject matter, rather than the presence or absence of literal support in the specification for the claim language.

Applicants submit that one skilled in the art, with his or her knowledge in this art, would recognize from the originally filed disclosure (including the specification, original claims, and drawing) that the applicants possessed as of the effective filing date (12/13/90) the embodiments of their invention as defined by the presently pending claims 83 to 148. Hence, the claims are "supported" by the originally filed disclosure.

The Rejection

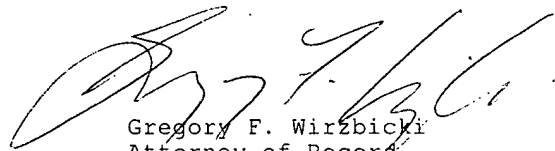
Turning now to the Office Action dated February 17, 1998, claims 83 and 84 stand rejected for obviousness type double patenting over claims 1-9 of applicants' U.S. Patent 5,288,393. In response, applicants herewith present a terminal disclaimer (with the appropriate fee of \$110 authorized to be charged to applicants' deposit account in the "FEE TRANSMITTAL" form accompanying this communication) disclaiming the term of any

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patent issuing on the present application beyond the expiration of said U.S. Patent 5,288,393. In addition, applicants have voluntarily—for their own purposes—chosen to further disclaim over their two other related patents, U.S. Patents Nos. 5,593,567 and 5,653,866. One effect of this disclaimer, therefore, is to eliminate all possible issues of obviousness type double patenting as to any claim of the present application over any claim of any of the three patents specifically identified above. In stating this, applicants specifically note that they do not admit that any such issue exists (or existed) as to any of the three patents, including the '393 patent, but the presentation of this terminal disclaimer simplifies matters by eradicating even the possibility of such an issue affecting the validity of any claim in a patent issuing from this application.

Accordingly, with the sole rejection having been overcome by presentation of the terminal disclaimer and with the claims believed to define patentable subject matter, the applicants respectfully request an allowance.

Respectfully submitted,



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